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CHARLES ELMORE CROPLEY

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1949 - - - - - Number 419

PLANKINTON PACKING COMPANY,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD.

Brief on Behalf of William Stokes, Employee.

DAVID BEZNOR,
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Attorneys for William Stokes.

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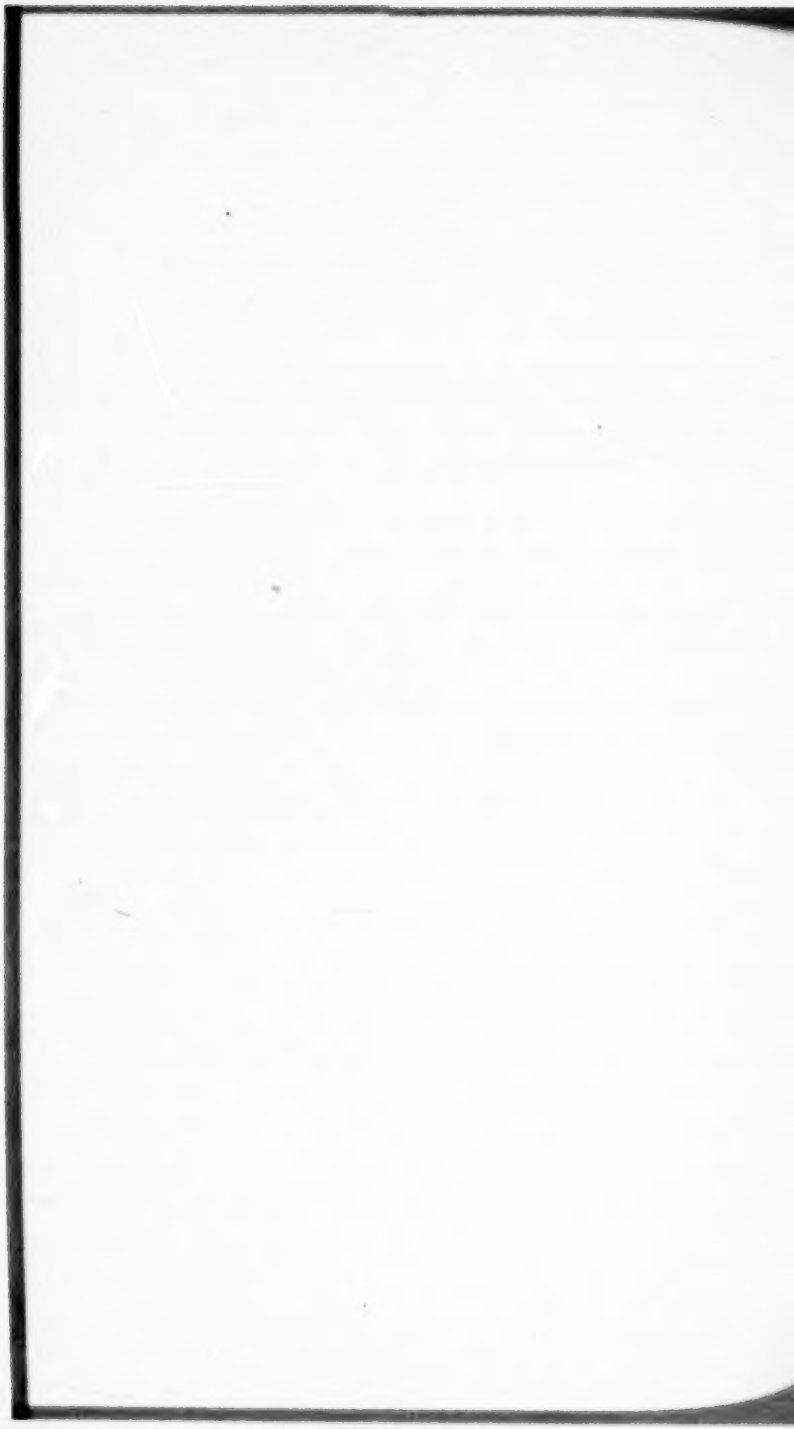

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Brief on Behalf of William Stokes, Employee.

This brief is on behalf of William Stokes, the employee here involved.

The presentation of the questions involved and the statement of facts as detailed by the Attorney General are concurred in by William Stokes.

Argument.

The National Labor Relations Act does not purport to legislate on the unfair labor practice which is the subject of the Board's order.

The brief of the Attorney General of Wisconsin adequately discusses the law and the facts applicable here.

In addition, however, there is a determinative distinction between the State and Federal labor acts. *An employee may commit an unfair labor practice under the State Act.* The Federal law made no such provision. *The Board found that the union was guilty of an unfair labor practice.* That union conduct was the basis of the Board's order.

This aspect of the case has not been referred to by the Attorney General, nor did the respondents or the amicus curiae allude to it.

Although Section 8 of the National Labor Relations Act, 29 U. S. C. A., Section 158(3)[1], is almost identical with the language of Section 111.06[2] of the Wisconsin Statutes, the State Statute has sought to legislate more minutely in the field of labor relations. The State makes it an un-

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[1] To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7. (The right of self-organization, to join or assist labor organizations.)

[2] To interfere with, restrain or coerce his employees in the exercise of the rights guaranteed in Section 111(04). (Right of self-organization.)

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fair labor practice for an employee individually or in concert with others "to coerce, intimidate or induce any employer to interfere with any of his employees in the enjoyment of their legal rights * * * " Such a provision is not contained in either the Wagner Act (in effect at the time of the Board's order) or the subsequently enacted Taft-Hartley law.

The case simmers down to a determination of whether the National Labor Relations Act sought to regulate the same segment in the field of labor relations as the State does in relation to these particulars. If, as the respondents contend, the National Labor Relations Act does blanket the field, it is paramount; but if the National Labor Relations Act is "indifferent" the State law applies. *(Bethlehem Steel Co. vs. New York State Labor Relations Board,* 330 U. S. 767.)

An analysis of the Federal and State laws indicates clearly that the National Labor Relations Act did not purport to deal with labor relations with the particularity expressed in the State Statute. Section 111.06(2)b makes it an unfair labor practice for an employee individually or in concert with others to coerce, intimidate or induce an employer to discharge an employee because the employee has refused to join a labor union. The Board found the employer **and the union guilty of such conduct. These are unfair labor practices which are not within the comprehension of the National Labor Relations Act**. And, as the United States Supreme Court said in *Algoma P. & V. Co. vs. Wisconsin Employment Relations Board,* 336 U. S. 301, * * * the enumeration by the Wagner and the Taft-Hartley Act of unfair labor practices over which the National Board has exclusive jurisdiction does not prevent the states from enforcing their own policies in matters not governed

by said law * * * " Since these particular matters upon which the Board's order was based are not included within the scope of the Federal law, the State is free to govern the labor relations as enunciated in the State Act.

The State Board found as a fact that the respondent union was guilty of an unfair labor practice:

6. Immediately after receipt by the union officers of the letter of resignation from the complainant, Stokes, the employes employed by the respondent employer in the department in which Stokes was employed, all of whom were members of the respondent union, commenced a course of conduct intended to coerce and intimidate the complainant, Stokes, and to cause his loss of employment for the reason he had exercised his right to refrain from membership in the respondent union. That at the same time officers, agents and members of the respondent union began a course of conduct intended to coerce, intimidate and induce the respondent employer to discharge the complainant, Stokes, for the reason that Stokes had exercised his right to refrain from membership in such union. That such course of conduct consisted of calling names, engaging in work stoppages, prevailing upon the employee with whom Stokes had been riding to and from work to discontinue such arrangement; and by requesting and attempting to induce the employer to discharge the complainant Stokes. (R. 45-46)

7. That on the 9th day of May, 1945, at the request of the respondent union, the respondent employer discharged the complainant as the result of the coercion, intimidation, and inducement of the respondent union and this interfered with the right of the complainant, Stokes, to refrain from membership in the respondent union. (R. 46)

The State Board concluded:

1. That the Union Packing House Workers of America, C.I.O., Local No. 50, committed an unfair labor practice

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by coercing and intimidating William Stokes in the exercise of his right to refrain from membership in such organization, and by coercing, intimidating, and inducing the respondent employer to interfere with the right of complainant, Stokes, to refrain from membership in such organization, and by inducing the respondent employer, to discharge Stokes from its employment. (R. 46)

Based upon the foregoing findings of fact and conclusions of law, the State Board issued an order:

1. *It Is Ordered* that the respondent, United Packing House Workers of America, C.I.O., Local No. 50, shall immediately cease and desist from engaging in any activities such as name-calling, work stoppages or other coercive or intimidatory activities for the purpose of interfering with the right of William Stokes or any other employe of the respondent, Plankinton Packing Company, to refrain from membership in the respondent union. (R. 47)

This order is involved in this appeal.

The State legislated in this field of *union conduct*. No such provision has been made in the federal law.

International Union, U.A.W. vs. Wisconsin Employment Relations Board, 336 U. S. 245, 69 Sup. Ct. 516, is controlling. This Court held that " 'Congress has not made such employee or union conduct as is involved in this case subject to regulation by the Federal Board. There is no existing or possible conflict or overlapping between the authority of the Federal and State Boards, because the Federal Board has no authority either to investigate, approve or forbid the union conduct in question. This conduct is governable by the state or it is entirely ungoverned."

The union by its conduct was found by the Board to have violated the State Act. If the state may not govern the conduct "it is entirely ungoverned." The Congress did not intend such a result nor has this Court so construed it.

It is, therefore, respectfully submitted that the judgment of the Supreme Court of the State of Wisconsin be affirmed.

DAVID BEZNOR,
Attorneys for William Stokes.

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